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MAIL DATE
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Decision 02-04-071 April 22, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Valencia Water Company (U342-W) Seeking Approval of its Updated Water Management Program as Ordered in Commission Resolution W-4254 dated August 5, 1999.	Application 99-12-025 (Filed on December 17, 1999)

ORDER CORRECTING ERROR

The Commission has been informed that several nonsubstantive errors exist in D.02-04-002. The attached revision to D.02-04-002 corrects the caption to "Application of Valencia Water Company (U342-W) Seeking Approval of its Updated Water Management Program as Ordered in Commission Resolution W-4254 dated August 5, 1999." The correction adds the parenthetical "(one mitigated negative declaration and three EIRs)" at page 2, line 15, after the parenthetical ("EIRS"). The attached revision replaces the word "Valencia" on page 3, lines 17, 20 and 22, and page 8 line 4, with the word "Ventura." The correction changes the words formerly misspelled at page 6, line 7 as "country" to its correct spelling, "county," and at page 6, line 24 as "argues," to its correct spelling, "argues." The attached revision inserts the word "the" before the word "Decision" on page 7, line 17. Lastly, the correction deletes the first zero in the citation of A.99-12-025 at page 8, line 20, and on page 14, line 11 the word "groundwater" should be deleted and replaces with the word "water." No other changes have been made to this decision.

Therefore, pursuant to the authority granted in A-4661, **IT IS ORDERED** that D.02-04-002 is corrected as described herein. Attached is a conformed copy of D.02-04-002.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

120352

ATTACHMENT

Decision 02-04-002 April 4, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Valencia Water Company (U342-W) Seeking Approval of its Updated Water Management Program as Ordered in Commission Resolution W-4254 dated August 5, 1999.	Application 99-12-025 (Filed on December 17, 1999)

ORDER DENYING REHEARING OF DECISION 01-11-048

I. SUMMARY

By this Order, the Commission denies the applications for rehearing filed by Angeles Chapter of Sierra Club, Santa Clarita Organization for Planning the Environment, and Friends of the Santa Clara River ("Sierra Club") and by Ventura County ("Ventura") of Decision (D.) 01-11-048 ("Decision"). The Decision approved Valencia Water Company's ("Valencia") Water Management Program ("WMP") and authorized service area expansion.

Sierra Club and Ventura challenge the Decision primarily on the grounds that the Commission erred in not acting as "Lead Agency" on the WMP, and therefore, they contend that the Commission failed to follow the requirements of the California Environmental Quality Act[1] ("CEQA"). Both applicants object to the Commission's determination that the "project" for CEQA purposes is the WMP and Advice Letters ("ALs") 88 and 90. Sierra Club and Ventura argue that the WMP by itself is a "project" for purposes of CEQA review, and that the

[1] CEQA is found at California Public Resources Code, Division 13 § 21000, et seq.

Commission should have acted as lead agency on the WMP since the Commission is the only agency reviewing the WMP. Sierra Club and Ventura also make several arguments based on the premise that the record does not support the Commission's Decision. Sierra Club filed requests for stay and for oral argument, which have been addressed in this order. We have considered the arguments of Sierra Club and Ventura and conclude that they are without merit. Therefore, the requests for rehearing by Sierra Club and Ventura are denied.

II. BACKGROUND

On December 17, 1999, Valencia filed Application (A.) 99-12-025 seeking approval of its updated WMP as ordered in Commission Resolution W-4154 dated August 5, 1999.[2] The Commission's approval of ALs 88 and 90 authorized Valencia to provide water service to the North Valencia 2, Mountain View, West Creek and Tesoro del Valle development projects. The Commission determined that the WMP combined with ALs 88 and 90 constituted a "project" under CEQA. The Environmental Impact Reports ("EIRs") (one mitigated negative declaration and three EIRs) for these four development projects were previously certified by either Los Angeles County or the City of Santa Clarita acting as lead agency pursuant to CEQA.

The Commission decided that it was unnecessary to duplicate the CEQA reviews already conducted by local agencies. The four EIRs all concluded that there would not be significant environmental impacts on the water service or water supply. The Commission reviewed the environmental assessments in the EIRs and the Proponent's Environmental Assessment ("PEA") for the four development projects covered in ALs 88 and 90 and concluded that all possible environmental impacts related to Valencia's proposed extension of water service were within the scope of the EIRs. After considering the WMP in conjunction with ALs 88 and

[2] In Resolution W-4154, the Commission approved ALs 84 and 85, filed by Valencia, requesting expansion of service area. The Commission also ordered Valencia to file an updated WMP for the purpose of allowing the Commission and all interested parties to evaluate the effects of further expansion of Valencia's service area on its water supply.

90, the Commission concluded that the WMP's demonstration of the available water supplies gives a sufficient margin of safety to allow Valencia to serve new customers as delineated in ALs 88 and 90.

Applications for Rehearing were timely filed by Sierra Club on December 31, 2001, and by Ventura on December 24, 2001. Valencia filed a response to Sierra Club's and Ventura's Applications for Rehearing, which has been considered in this order. The arguments presented in Ventura's Petition for Writ of Certiorari, Mandamus or other Appropriate Relief filed in the Supreme Court of the State of California on March 20, 2002, have also been considered.

III. DISCUSSION

A. Sierra Club's and Ventura's Lead Agency Arguments

Sierra Club's and Ventura's applications for rehearing contain distinct arguments, but both parties focus on one principal issue. Sierra Club and Ventura contend that the Commission should have acted as a as a "Lead Agency" rather than as a "Responsible Agency" on Valencia's WMP. (Sierra App. for Rehearing at 11; Valencia App. for Rehearing at 1.) Sierra Club and Ventura argue that since the Commission is the only agency that is reviewing Valencia's WMP, the Commission must be the lead agency on the WMP. (*Id.* at 12; *Id.*) Furthermore, Sierra Club and Ventura believe that the Commission "sidestepped" environmental review on the WMP, violating CEQA. (*Id.*) Sierra Club's and Ventura's assertions fail for the following reasons.

This argument presumes that the WMP standing alone is a "project." (See Sierra App. for Rehearing at 10; Ventura App. for Rehearing at 1-2.) The Commission expressly rejected this argument in D.01-11-048. The Commission observed in the Decision that "the combination of a general WMP plus the advice letter's specific requests for entitlements on the basis of the WMP is what the Commission found to comprise a 'project' requiring assessment of potential

environmental impacts." (D.01-11-048 at 17 (citing D.00-10-049, *mimeo* at 22, 24 (Conclusions of Law 1).)

CEQA defines "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . " (CEQA Guidelines § 15378.) Under California caselaw, "[t]he term 'project' is broadly defined and includes any activities which have a potential for resulting in a physical change in the environment, directly or ultimately." (*Sierra Club v. County of Sonoma* (1992) 6 Cal. App. 4th 1307, 1315.) Thus, the Commission cannot accept Sierra Club's and Ventura's arguments that the WMP itself be considered a "project" under CEQA because according to the statutory definition of "project," the Commission must consider "the whole of an action" that may impact physical change in the environment. The WMP standing alone does not make a physical change to the environment.

The Commission correctly assumed the role of responsible agency on the "project." We determined that the four development plans at issue in ALs 88 and 90 received environmental review from other local agencies, and therefore, we concluded that the Commission would best fulfill its duties under CEQA as a responsible agency. (D.01-11-0148 at 13.) A responsible agency as defined under the CEQA Guidelines, is a "public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration." (D.01-11-048 at 15 (citing 14 Cal. Regs. 15381).) The Commission noted that approval as defined in the CEQA Guidelines refers to the approvals that are within the jurisdiction of the responsible agency, not the approval of the project as a whole. (D.01-11-048 at 15.) The Commission found that, in order to follow the proper procedures under the CEQA Guidelines as responsible agency, it must review the EIR for each of the development projects and specifically focus on the environmental impacts relating to water resources. (D.01-11-048 at 16; see

also Pub. Res. Codes 21002.1(d); CEQA Guidelines 15096(a), (f).) We reviewed the EIRs and approved ALs 88 and 90 in compliance with our duties as a responsible agency.

Sierra Club and Ventura have not presented the Commission with any evidence that demonstrates that we committed legal error in acting as a responsible agency, rather than a lead agency, on the "project." Accordingly, Sierra Club's and Ventura's argument that the Commission should assume the role of lead agency on the WMP is without merit.

Ventura makes the additional argument that the Commission's recognition that the WMP is a planning document compels the characterization of the WMP as a CEQA "project." (Ventura App. for Rehearing at 1.) Ventura reaches this conclusion by arguing that a planning document, as the Commission characterized the WMP in D.01-11-048, is the same as a general plan or general plan amendment, which are subject to CEQA review. (Ventura App. for Rehearing at 2-3.) Ventura contends that "[g]eneral plans are subject to CEQA environmental review precisely because these planning documents have a potential for resulting in a physical change in the environment, directly or *ultimately*." (Ventura App. for Rehearing at 3 (emphasis in original) (citing *Sierra Club v. County of Sonoma* (1992) 6 Cal. App. 4th 1307, 1315).)

Ventura misrepresents the law. A general plan is not the same as a planning document. Section 15262 of the CEQA Guidelines states that "[a] project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities." Thus, Section 15262 of the CEQA Guidelines clearly differentiates between a plan, that

has legally binding effect, and planning studies, which do not require CEQA review.

The Commission also agrees with Valencia's argument in its Response to Ventura's Application for Rehearing of D.01-11-048 that Ventura's portrayal of a general plan or a general plan amendment is inaccurate. (Valencia Response at 3.) According to California statutory law, a general plan means "the physical development of the county or city, and of land outside its boundaries which in the planning agency's judgment bear relation to its planning." (Cal. Govt. Code § 65300.) Since the WMP does not affect physical change in the environment, it is not a general plan or general plan amendment. For the aforementioned reasons, Ventura's argument is without foundation.

B. Sierra Club's and Ventura's Contentions That the EIRs and PEA May Not Supplant CEQA Review on the WMP

Both Sierra Club and Ventura contend that neither the expert testimony, nor the four EIRs submitted with the PEA, may substitute for CEQA review of the WMP. (Sierra App. for Rehearing at 11; Ventura App. for Rehearing at 5.) Sierra Club contends that D.01-11-048 is based on the faulty premise that "no formal environmental review is required with respect to the WMP as a whole and therefore, this Commission need only consider whether the PEA and the four site-specific EIRs it references examine the impacts of the development proposed pursuant to [] ALs 88 and 90." (Sierra App. for Rehearing at 11.) Sierra Club's claim again hinges on its contention that the WMP on its own is a "project" for purposes of CEQA review. Ventura argues that the Commission's determination that the WMP Figure III-2 water supplies are reasonably and accurately stated does not speak to "the environmental consequences of actually supplying those quantities that are considerably in excess of historical use." (Ventura App. for Rehearing at 5-6.) Ventura asserts that the expert analysis that the Commission and Valencia relied upon did not deal with these environmental issues and "cannot

substitute for the public review process critical to CEQA." (Ventura App. for Rehearing at 6.)

Sierra Club and Ventura misinterpret D.01-11-048. In the Decision, we stated that since the WMP standing alone is not a "project," it would be illogical to perform a review of all the potential environmental impacts of the water resources present in the WMP. (D.01-11-048 at 17-18.) Although the Commission recognized that CEQA applied to the "project" as a whole, since Los Angeles County or the City of Santa Clarita acting as "lead agency" under CEQA had already prepared EIRs for the four development projects contained in ALs 88 and 90, the Commission determined that it was unnecessary to duplicate the CEQA reviews that had already been conducted by local lead agencies. (*Id.* at 18.) As indicated above, the WMP alone does not constitute a project. ALs may constitute a project requiring environmental review of environmental documents, and in this case, the Commission combined the WMP with the ALs for that purpose. Consequently, the Commission requested that Valencia submit along with its PEA, copies of all EIRs that relate to ALs 88 and 90, and evidence of local agency actions concerning the EIRs. (*Id.*) As we observed in the Decision, the EIRs for the respective ALs included cumulative impact assessments. (D.01-11-048 at 13.)

The Commission's actions as a responsible agency in this proceeding complied with CEQA. The Commission considered all four final EIRs prepared by the lead agencies, and the Commission reached its own conclusion to approve the WMP in conjunction with ALs 88 and 90. (See D.01-11-048 at 15; CEQA Guidelines 15096(a), (f).) Before we reached D.01-11-048, we considered the environmental effects identified in the EIRs of the provision of water service, and decided that they did not require additional environmental documentation. (D.01-11-048 at 15; see also Pub. Res. Code § 12002.1(d); CEQA Guidelines 15096(a), (f).) In addition, there have been numerous hearings held on this issue, and many expert witnesses testified on behalf of Ventura, Valencia and Sierra Club. Thus,

the Commission's review of the PEA, the EIRs submitted in support of the ALs and PEA and the expert testimony were sufficient to satisfy CEQA review. The record disproves Ventura's contention that there has not been ample public review on this matter. In short, Sierra Club's and Ventura's assertions that the Commission's actions have avoided CEQA review on the WMP are simply not true. The Commission conducted a thorough environmental review on the "project," the WMP, in conjunction with ALs 88 and 90.

Sierra Club also appears to elude to the fact that had the Commission conducted an environmental review on the WMP as a lead agency, then the Commission would have performed an analysis of the water supply of the entire basin. (Sierra App. for Rehearing at 12.) Similarly, Ventura argues that the Commission has conducted an "improper piecemeal review" of the "project." (Ventura App. for Rehearing at 7.) Ventura contends that "to proceed in this fashion will forever avoid CEQA review of supplying water to the region as a whole as opposed to supplying individual projects." (*Id.*) Sierra Club and Ventura fail to acknowledge that the Commission does not have the jurisdiction to conduct CEQA review over the region as a whole. Local and regional planning determinations are made by public water agencies in the region. The Commission cannot adjudicate water rights or assume the role of a regional water or land use planning agency. (See Scoping Memo of A.99-12-025 at 5.) Thus, Ventura's piecemeal argument fails and actually cuts the other way. Had the Commission considered the WMP on its own, the Commission could not have examined the physical effect that the four development projects under the specific ALs would have on the environment. Rather than evaluating the WMP on its own, the Commission reviewed the WMP along with ALs 88 and 90, which describe the physical effect on the environment.

Sierra Club also relies on precedent taken out of context in order to support its claim that a WMP does have a physical impact on the environment, and

therefore, the Commission must perform CEQA review on the WMP. Sierra Club states that "'approval of the WMP is 'an essential step in a chain of events leading to a change in the physical environment,' which [in turn] would require CEQA review.'" (Sierra App. for Rehearing at 11-12 (citing *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal. App. 4th 464, 472 (citing *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263)).) Sierra Club lifts this sentence from a prior Commission decision on A.99-12-025, and takes it out of context. (See D. 00-10-049 at 13.) In particular, the beginning of the sentence states that "[i]f the advice letters could result in an environmental impact, then Commission approval of the WMP is 'an essential step . . .'" (D.00-10-049.)

The cases that the Commission quoted in writing this statement make it clear that Sierra Club's position that a WMP is a "project" triggering CEQA review is without foundation. The *Kaufman* case discusses whether the act of securing financing for an "anticipated but uncertain future projects" was a "project" under CEQA. (*Kaufman*, 9 Cal. App. 4th at 472.) In *Kaufman*, the court determined that this act was not a "project" for CEQA purposes. (*Id.* at 473-474.) In analyzing this issue, the court discussed the definition of "project" and turned to the *Bozung* case for clarification. (*Bozung*, 13 Cal. 3d at 263.) The court found that the annexation of a ranch to the City of Camarillo would "culminate in physical change to the environment." (*Bozung* at 281.) However, unlike an annexation, the WMP does not provide any type of entitlement and therefore, is not deemed a "project" under CEQA.

For the foregoing reasons, Sierra Club's and Ventura's claims that neither the expert testimony, nor the four EIRs submitted with the PEA, may substitute for CEQA review of the WMP lack merit.

C. Ventura's Claim that the WMP Will Be Relied on to Encourage Development

Ventura contends that the Commission's endorsement of the WMP will provide assurances that sufficient water supplies are available to support additional development. (Ventura App. for Rehearing at 3.) Ventura claims that this proves that the WMP is more than a "mere planning document." (Ventura App. for Rehearing at 4.) Ventura's reasoning is faulty for two reasons.

First, Ventura's characterization of the WMP is inaccurate. Approval of the WMP does not commit the Commission to anything nor does it provide Valencia with an entitlement. (See *Friends of Mammoth v. Board of* Supervisors (1972) 8 Cal. 3d 247.) Whereas CEQA defines a project as giving an entitlement, a WMP standing alone does not provide any entitlement. Although the WMP is an important tool in understanding a utility's plan for possible service territory expansion, a WMP is not in all cases indicative of the ultimate projects a utility will seek approval to undertake in actuality. The Commission must approve specific ALs with EIRs in order to approve a "project." Thus, Ventura's contention that the WMP will be relied on to support additional development is misplaced.

Second, in D.01-11-048, we have determined that the WMP provides a reasonable estimate of the water supplies available. (D.01-11-048 at 22.) In the Decision, the Commission heard experts from all sides, and concluded that adopting the WMP would not lead to an overdraft of the groundwater. (D.01-11-048 at 28.) Contrary to Ventura's assertions, the Commission did not make any statements that would encourage others to rely on D.01-11-048 for "specific and accurate" information about the water resources available to support other development projects.

Moreover, since the WMP is not a general plan, Ventura may object to information and facts contained in the WMP through the EIR process for any new development without attempting to amend the WMP. (See Valencia Response at

5.) If Valencia wishes to expand future service to the Newhall Ranch Specific Plan, Valencia will need to file a new application that is supported by an updated WMP. (D.01-11-048 at 45.) Therefore, Ventura's contention that the Commission's approval of the WMP reinforces contemplated development decisions is without merit.

D. Sierra Club's Assertion That the Commission Has Failed to Follow Appropriate CEQA Procedures

Sierra Club makes the assertion that the Commission has failed to comply with CEQA and has not followed the EIR Guidelines adopted by the Commission in Rule 17.1(a). (See Cal. Code Regs. § 15000, *et seq.*) Sierra Club proceeds through a lengthy analysis of the proper procedures that the Commission must follow in proceeding under CEQA. (Sierra App. for Rehearing at 12-18.) The merits of Sierra Club's argument need not be reached because it is based on a faulty presumption that the Commission is the lead agency on this "project." The Commission determined the local entities were lead agencies for CEQA purposes and produced final EIRs. The Commission acted as a responsible agency and fulfilled its responsibilities as such under CEQA by evaluating the EIRs and making its findings and determinations in view of those documents. Therefore, Sierra Club's argument lacks merit.

E. Sierra Club's Argument Regarding Perchlorate Contamination

Sierra Club asserts that D.01-11-048 incorrectly holds that the perchlorate contamination problem has been settled. Sierra Club contends that contrary to D.01-11-048's conclusion and ALJ Patrick's Proposed Decision, no remediation has taken place. (Sierra App. for Rehearing at 5.) Sierra Club overstates the Commission's conclusion. The Commission never declared in its Decision that the perchlorate problem had been resolved. Rather, the Commission determined that "planning for remediation was substantially underway" and that "for purposes of

the WMP, Valencia is appropriately accounting for the impact of perchlorate contamination on its water supplies." (D.01-11-048 at 29.) In addition, Sierra Club's declaration that "[i]t is undisputed that the Department's McJunkin is the foremost authority on perchlorate contamination of Valencia's proposed groundwater supply" does not require the Commission to adopt Sierra Club's position on this issue. (Sierra App. for Rehearing at 5.) Several witnesses with extensive and impressive experience testified on both sides of the perchlorate issue. (See, e.g., Direct Testimony of Richard D. McJunkin; Direct Testimony of Steven B. Bachman; Rebuttal Testimony of Robert J. DiPrimio; Reply Testimony at Richard Slade; Reply Testimony of Stephen B. Johnson.). Moreover, a significant portion of Sierra Club's argument that the Commission erroneously claimed that the perchlorate problem has been solved relies on the California Department of Toxic Substances Control's ("DTSC") comments, which were never filed with the Commission. Since these comments are not a part of the record of A.99-12-025, the Commission should not address the merits of the comments from DTSC.

The Commission has carefully reviewed the record and finds that there is sufficient evidence to support a finding that the perchlorate problem is being adequately addressed. (See Rebuttal Testimony of Robert J. DiPrimio; Reply Testimony at Richard Slade at 3-17; Reply Testimony of Stephen B. Johnson at 2-6; Further Testimony of Robert DiPrimio at 10-13; Prepared Direct Testimony of Robert J. DiPrimio at 14.) For the foregoing reasons, Sierra Club's argument that D.01-11-048 erroneously holds that the perchlorate problem has been solved is without merit.

F. Sierra Club's Claim of Insufficient Water Supplies From the Alluvial Aquifer and Saugus Formation

Sierra Club asserts that Valencia did not adequately show that there are sufficient groundwater supplies from the Alluvial Aquifer and Saugus Formation

to meet the water demand projected in the WMP. (Sierra App. for Rehearing at 18.) Sierra Club contends that there will be a "looming shortfall" in the Santa Clarita Valley's groundwater supplies that will significantly worsen after the Newhall Ranch Project is developed. (*Id.* at 19.) Furthermore, Sierra Club asserts that the Commission incorrectly assumed in D.01-11-048 that possible shortfalls in the Alluvial Aquifer and Saugus Formation could be obtained from other sources. (*Id.* at 20.) The primary concern Sierra Club has regarding this issue is that because Valencia, it argues, has not demonstrated that there are adequate groundwater supplies to meet the WMP's projected demands, the perchlorate problem, previously discussed, could worsen. (Sierra App. for Rehearing at 17-18.)

In D.01-11-048, the Commission found that the "WMP's reliance on groundwater from the Saugus Formation is within reasonable limits, and we reject Ventura's contention that the Saugus Formation will be in overdraft by the year 2011." (D.01-11-048 at 28.) Likewise, the Commission determined that the WMP's predictions of available water supplies in the Alluvial Aquifer were also reasonable. (*Id.*) The Commission reviewed the testimony of expert witnesses and all relevant documentation in anticipation of D.01-11-048. In the Decision, the Commission determined that the WMP's reliance on the Alluvial Aquifer and Saugus Formation were within reasonable limits. (D.01-11-048 at 28.)

Furthermore, the Commission found that Ventura's expert witness, Steven Bachman compared mismatched figures in order to reach his conclusion that the WMP provides inaccurate information regarding the adequacy of water supply for Valencia's future use. (D.01-11-048 at 26, 29.) Thus, the Commission has already addressed identical arguments in the Decision, and Sierra Club has not provided any new information that would demonstrate that the Commission committed legal error by determining that the WMP's reliance on groundwater from the Alluvial Aquifer and Saugus Formation is reasonable. In addition, as

previously discussed, the Decision specifically states that if Valencia wants to expand its service area to Newhall Ranch, it must file a new application requesting authority to expand its service area and file an updated WMP and AL discussing the development. (D.01-11-048 at 45 (Ordering Paragraph 4.) Therefore, Sierra Club's argument that Valencia did not adequately show that there are sufficient groundwater supplies to meet the water demand projected in the WMP is without merit.

G. Sierra Club's Claim That the WMP Overstates Water Supplies From the State Water Project

Sierra Club contends that Valencia's WMP also overstates the available water supplies from the Castaic Lake Water Agency (CLWA). Sierra Club argues that the Decision's conclusions that the WMP's estimate of the range of SWP supplies that will be available and the comparison of available supplies and project demand presented in WMP Figure II-2 are reasonable, lack evidentiary support. (Sierra App. for Rehearing at 20 (citing D.01-11-048 at 40, Finding 36 and 43, Conclusion 6).)

Contrary to Sierra Club's assertions, the record supports the Commission's determination that the WMP's prediction of the range of water supply that will be available from the SWP is reasonable. (See D.01-11-048 at 30-33.) After evaluating the WMP and numerous expert testimonies, the Commission determined that "Valencia has reasonably demonstrated the availability of firming supplies of the magnitude indicated in the WMP . . . and [t]hese supplies . . . support our finding that the WMP's reliance on SWP water is reasonable." (D.01-11-048 at 33.) Sierra Club has not provided any evidence in its Application for Rehearing to persuade the Commission to revise this portion of its Decision.

H. Sierra Club's Assertion that CLWA Delivers Water on a "First-come, First-served Basis"

Sierra Club claims that D.01-11-048 assumes incorrectly that Castaic distributes SWP water on a "first-come, first-served basis." Sierra Club contends that, contrary to the Commission's assertion in D.01-11-048, Castaic's enabling legislation states that the allocation of SWP water to Valencia and the three other water purveyors in the basin is "based on the cumulative capital contributions to Castaic from customers within the purveyor's respective service areas." (Sierra App. for Rehearing at 21 (citing Reporter's Transcript, Col. 5 (June 5, 2000) at 672, lines 17-22).) Sierra Club is concerned about this issue because, it argues, Castaic's statutory water allocation formula is an obstacle to Valencia in obtaining SWP water. (Sierra Club App. for Rehearing at 22.)

Sierra Club is correct in asserting that the legislated allocation formula for delivery of SWP water to Valencia and the three other water purveyors in the basin is based on relative capital contributions by the retail purveyors. However, witnesses Robert Sagehorn and Robert J. DiPrimio testified that despite the language of the statute, CLWA's practice is to satisfy the retail purveyors' supply request on a "first-come, first-served basis." (See Robert Sagehorn Direct Testimony at 8-9; Prepared Direct Testimony of Robert J. DiPrimio at 5-6; Robert J. DiPrimio Reply Testimony at 7.) Robert Sagehorn's and Robert J. DiPrimio's testimony that CLWA will allocate SWP supplies to the four water purveyors in the basin on a "first-come, first-served" basis provides an adequate foundation for the Commission to conclude that Valencia will be supplied SWP water on a "first-come, first-served" basis.

I. Sierra Club's Request for a Stay

Sierra Club requested a stay of the Commission's approval of ALs 88 and 90 pending review of its application for rehearing in order to maintain the status quo and to avoid irreparable harm from accelerated pumping. Two factors are

relevant in determining whether a stay request is meritorious: (1) whether the moving party will suffer imminent irreparable harm if the stay is denied; and (2) whether the moving party is likely to prevail on the merits. Given the conclusion that the allegations of legal error in Sierra Club's application for rehearing lack merit, the request for a stay is denied.

J. Sierra Club's Request for Oral Argument

Sierra Club also requested oral argument on its Application for Rehearing. Rule 86.3 of the Commission's Rules of Practice and Procedure states that oral argument will be considered if the application "demonstrates that oral argument will materially assist the Commission in resolving the application, and . . . raises issues of major significance for the Commission." (Cal. Code of Regs., Tit. 20, § 86.3). Sierra Club contends that D.01-11-048 adopts new precedent, presents legal issues of great significance to the public, and brings up new issues that will likely have a great effect on future precedent. (Sierra App. for Rehearing at 1.) Contrary to its assertions, Sierra Club has not presented any evidence that the Decision departs from existing precedent or establishes new precedent. Therefore, Sierra Club's request for oral argument is unjustified.

IV. CONCLUSION

For the reasons stated above, there is no legal error in the Decision. Therefore, the applications for rehearing by Sierra Club and Ventura are denied.

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Therefore **IT IS ORDERED** that:

1. Rehearing of D.01-11-048 is hereby denied.
2. Sierra Club's request for stay is hereby denied.
3. Sierra Club's request for oral argument is hereby denied.

This order is effective today.

Dated April 4, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners